IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.635 OF 1998

IIT Capital Services Ltd. ..Petitioners.

V/s.

Direct Marketing Pvt.Ltd. ..Company.

Ms.Deepa Mani i/b S.K.Srivastava & Co. for petitioners.

CORAM: A.M.KHANWILKAR,J

DATE : AUGUST 12, 2005.

P.C. :

1. Heard counsel for the petitioner. Perused the pleadings.

2. This petition is under section 433, 434 of Companies Act, for directing winding up of respondent company. According to the petitioners, on payment of valuable consideration Real Value Appliances Limited drew six bill of exchange of different denominations dated 29th April, 1996, 26th June, 1996, 25th June, 1996, 21st June, 1996, 19th June, 1996 and 17th June, 1996, aggregating to Rs.1.50 crores in favour of the petitioners. The said Bills of Exchange were accepted by the respondent company. This fact is established from the letters dated 25th January, 1996, 2nd February, 1996 and 28th March, 1996

respectively, sent by the respondent company to the petitioner. It is mentioned that the concerned Bills of Exchange drawn by Real Value Appliances Ltd. were duly accepted by the respondent company in connection with the specified invoices for the goods supplied to the respondent company by Real Value Appliances Ltd. The respondent company has confirmed in this letter that they will honour the said Bills of Exchange on the due date irrespective of any dispute in connection with the goods supplied by Real Value Appliances Ltd., which will be taken up separately against the said company. It is further accepted in this communication sent by the respondent that they undertake to pay overdue interest at the rate of 3% per month or part thereof, and all the incidental costs and expenses for whatever reasons the Bills of Exchange are not paid on due date. In addition, the respondent company issued postdated cheques in requisite amount in favour of the petitioner. It is not in dispute that the said postdated cheques when presented were returned back dishonoured. Petitioners have taken steps to initiate criminal actions under Section 138 of N.I. Act in that behalf. As the amount was not being received, inspite of repeated reminders, the petitioners sent statutory notice on 3rd April, 1998. The statutory

notice was duly served on the respondent company. In response the respondent company sent reply on April 22, 1998 contending that the petitioners were neither the holders nor the holders in due course of the alleged bills of exchange. Besides, it is stated in the reply to the statutory notice by the respondent company that the petitioners had granted a bill discounting facility to Real Value Appliances Ltd. and the said Bill of exchange were not the only bills of exchange discounted under the said facility; but it was thereafter, offered that all the transactions between the parties will have to be reckoned so as to ascertain as to which bills are paid and which bills are outstanding. Interestingly, no details have been given by the respondent company. The allegations referred to above as the amount was not received, petitioners eventually filed present petition under section 433 and 434 of the Companies Act on 15th June, 1998. In the petition as filed, stand taken by the respondent company in the reply to the statutory notice has been dealt with extensively. The petitioners have stated on affidavit that the Bills of Exchange were endorsed to different parties who in turn have re-endorsed to the petitioner for payment of requisite amount. Letters issued by such parties in 1996 have been placed on record at Exh.H-1 to H-6

pertaining to the subject Bills of Exchange. The petitioners have therefore, reiterated their stand that the respondent was liable to pay sum of Rs.2,04,35,012/- as on 15th June, 1998 and interest accrued thereon. Petitioners have asserted that the respondent company has raised dishonestly plea only to protract its liability to pay the outstanding amount. In response to the company petition respondent company has filed its reply affidavit. More or less taking the same stand which was taken in the reply sent to the statutory notice. The stand taken on behalf of the respondent has been duly considered by this court at the stage of admission and has been answered against the respondent in the following terms in the order :

> 3. In so far as the contention that the bills were not presented for payment a Division Bench of this Court in the case of Ardeshir Sorabsha Moos V. Khushaldas Gokuldas Trading as chunilal Khushaldas & co., XXXII B.L.R. 247 has held that presentation is not necessary to charge the acceptor. The Acceptor is the principal debtor and his liability is independent of presentment. A similar view has been taken by the Division Bench of the Lahore High Court in the case of Devi Ditta Mal Kirpal Singh V. Pratap singh Harnam Singh & OTHERS, A.I.R. 1933 Lahore, 173. A Division bench of the Calcutta High court in the case of Manik Ratan Guin & Another V. Prakash chandra & Others, A.I.R. 1955 Cal.338, has held that presentment is not necessary in case of an acceptor, as also a Single Judge

of the Delhi High court in the case of Canara Bank, New Delhi vs. M/s.Sanjeev Enterprises and others, A.I.R. 1988 Delhi 372. The contention that the Bills having not been presented, the amount is not due and not payable has, therefore, to be rejected.

4. The second contention is whether there is a requirement that the Bills have to be re-endorsed in favour of the petitioners herein. Admittedly, the petitioners have relied on the letters issued by the parties in whose favour the bills were endorsed. It is true that the company has disputed the genuiness of the said letters. On the contrary the Company has taken a stand that the letters have been fabricated subsequently i.e. after filing of the summary suit. To my mind that is immaterial as the company in their rejoinder to the reply filed by the company to the statutory notice had set out that they had paid the parties in whose favour the bills were endorsed and the bills had been endorsed in their favour as the company the drawer had failed to honour the bills. These facts have been pleaded in the petition also and there was no specific denial to the same nor have these amendments been challenged by the company herein. In that light of these facts the question again is whether re-endorsement on the bills was required. To my mind this question is also answered by the view taken by the Madras High Court in the case of Nilgiri Trading Co. by its Managing Partner J. Nanja Gowder and others vs.K.Simrathnull and others, A.I.R. 1957 Madras 691 and the view of the Andhra Pradesh High court in the case of Bhagayyanagar Cloth Stores by Partner Pareathala Antiah & others vs. Peesumal Harbhagvandas by Manager Vishan Das, A.I.R. 1958 A.P.33. The Division Bench of the Andhra Pradesh High Court has held that when a negotiable instrument is dishonoured and the endorsee gets back the bill after satisfying the claim of the endorsee he is remitted to his original right and falls again within the definition of a holder, as the property in the note has revested in him. I am in respectful agreement with the views expressed by the Division Benches of the

Madras and Andhra Pradesh High Courts, considering the facts on record.

This court passed conditional order directing the respondent company to pay or deposit an amount of Rs.2,04,34,012/- within six weeks from the date of the order. That conditional order was not complied with. Instead the respondent company carried the matter in appeal before the Division Bench of our High court which however was rejected on 20th April, 1999. Even further appeal so carried to the Apex court has been rejected. In that sense, view taken by this court on the legal question raised on behalf of the respondent has become final. Accordingly, as condition was not complied with, company petition stood admitted and has now placed for hearing after due advertisement and publication. However, none appears for the respondent company though served. As mentioned earlier, the legal question raised on behalf of the respondent company have been answered against the respondent by this court, in its order dated 28th January, 1999, which has become final by disposing appeals preferred before the Division Bench and subsequent appeal before the Apex court.

3. Essentially two contentions have been pressed on behalf of the respondent. First, is that the

petitioners are neither the holders nor holders in due course of the alleged bills of exchange. This submission clearly overlooks the stand taken by the petitioner, stated on affidavit, which is substantiated by documents on record that the concerned bills of exchange have been re-endorsed to the petitioners as back as in 1996 by the third parties in whose favour the same was endorsed by the petitioners. In other words, after reendorsement of the concerned bills of exchange, in favour of the petitioners, petitioners are competent in pursuing the claim against the respondent company on the basis of the said bills of exchange. Accordingly, there is no substance in the objection on behalf of the respondent company in this behalf.

4. The second objection seems to be that the petitioners had granted bill discounting facility to Real Value Appliances Ltd. and the said bills of exchange were not the only bills of exchange discounted under the said facility. It is only after taking into account all the transactions that it can be ascertained as to which bills are paid and which bills are outstanding. However, this plea is taken by the Respondent so as to create a facade of triable issue arising for consideration with a view to

protract the claim of the petitioner. In other words, the plea as raised is false and dishonest plea. Whereas the claim against the company is a just claim, and the defence of the company is not in good faith or one of substance. This court has no option to conclude that the legal presumption against the respondent company that it is unable to pay its debt has remained unrebutted. If it is so, petitioners are entitled to succeed in this petition in terms of prayer clause (a) and (b).

5. Accordingly, this petition is made absolute in terms of prayer clauses (a) and (b).